

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO LEXINGTON COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes, Circuit Court Judge

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Appellate Case No. 2016-000516

**RECEIVED**

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S.C. SUPREME COURT

ALEXANDER LYNCH, ..... PETITIONER,

v.

STATE OF SOUTH CAROLINA, .....RESPONDENT.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Whether the post-conviction relief court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action because of his attorney's failure to file an appeal, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

## **STATEMENT OF THE CASE**

The Respondent adopts the statement of the case put forth by the Petitioner.

## STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

## ARGUMENT

**Evidence exists to show the post-conviction relief court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).**

Petitioner alleged his first post-conviction relief (PCR) counsel failed to file an appeal from the denial of his first post-conviction relief action. The State conceded at the evidentiary hearing that Petitioner would be able to meet his burden to prove that PCR counsel's failure to file a notice of appeal from the denial of his first PCR constituted ineffective assistance. (App. p. 154, l. 5-21). Therefore, evidence exists for the PCR court to rule that Petitioner did not knowingly and voluntarily waive his right to appeal the first PCR Order.

CONCLUSION

For all the foregoing reasons, Respondent respectfully submits to this Court the post-conviction relief court properly granted the Petitioner a belated review of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,  
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By:

  
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Nov. 3, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO LEXINGTON COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes, Circuit Court Judge

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Appellate Case No. 2016-000516

Lower Court Case No. 2012-CP-32-4389

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ALEXANDER LYNCH,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**David Alexander, Esquire  
S.C. Commission on Indigent Defense  
PO Box 11589  
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This 3<sup>rd</sup> day of November, 2016

  
DEONNA ROGERS  
LEGAL ASSISTANT